

RECEIVED BY LEGAL DEPARTMENT  
AUG 15 2011  
DEUTSCHE BANK AG NY BRANCH

IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE  
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

BERNICE NEWMAN )

Plaintiff. )

VS. )

Docket No. CH-11- 1150 - 2

DEUTSCHE BANK NATIONAL )  
TRUST COMPANY, F/K/A BANKERS )  
TRUST COMPANY OF )  
CALIFORNIA, N.A., AS TRUSTEE )  
FOR THE BENEFIT OF THE )  
CERTIFICATE HOLDERS OF THE )  
AAMES MORTGAGE TRUST, )  
MORTGAGE PASS THROUGH )  
CERTIFICATES, SERIES 2001-1 )

AND )

BANK OF AMERICA, N.A. )

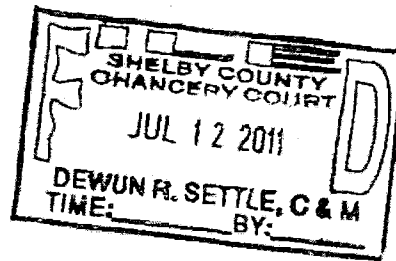
AND )

NATIONWIDE TRUSTEE )  
SERVICES, INC. )

AND )

WILSON & ASSOCIATES, P.L.L.C. )

Defendants. )



PETITION TO ENJOIN DEFENDANTS' TAKING POSSESSION, TO SET ASIDE  
FORECLOSURE SALE AND REINSTATE LOAN, AND COMPLAINT FOR DAMAGES

TO THE CHANCELLORS OF THE CHANCERY COURT FOR THE THIRTIETH  
JUDICIAL DISTRICT:

COMES NOW the Plaintiff, Bernice Newman, by and through legal counsel, Brewer &

Barlow PLC, Webb Brewer and Steve Barlow, and files her Petition and Complaint and states as follows:

**I. Preliminary Statement**

1. Plaintiff, Bernice C. Newman, brings this Petition to Enjoin Defendants' Taking Possession, To Set Aside Foreclosure Sale, and Complaint for Damages pursuant to the Tennessee Consumer Protection Act, Tenn. Code Ann. §47-18-101 *et seq.*, the Federal Truth in Lending Act, 15 U.S.C. 1601, and established principles of contract law.

**II. Jurisdiction and Venue**

2. Jurisdiction is conferred on this Court by Tenn. Code Ann. § 16-11-101.
3. Venue is proper in this Court pursuant to Tenn. Code Ann. §20-4-101 as the claim arose in this District.

**III. Parties**

4. Plaintiff Bernice Newman ("Ms. Newman") is a citizen and resident of Memphis, Shelby County, Tennessee.
5. Defendant Bank of America, N.A. ("B of A") is a national bank association with principal offices at 100 North Tryon Street, Charlotte, North Carolina, whose registered agent for service of process in the State of Tennessee is C T Corporation System, 800 S Gay St. Ste. 2021, Knoxville, TN 37929.
6. Defendant Deutsche Bank National Trust Company, F/K/A Bankers Trust Company of California, N.A., as Trustee for the Benefit of the Certificate Holders of the Aames Mortgage Trust, Mortgage Pass Through Certificates, Series 2001-1 ("Deutsche") is a national bank association with principal offices at 300 Grand Avenue, 41st Floor,

Los Angeles, CA 90071 whose registered agent for service of process in the State of Tennessee is Dennis Gillespie, 320 Seven Spring Way, Floor 1, Brentwood, TN 37027.

7. Defendant Nationwide Trustee Services, Inc. ("Nationwide") is a Tennessee corporation with principal offices at 1587 Northeast Expressway, Atlanta, GA 30329 whose registered agent in the State of Tennessee is National Registered Agents, Inc., 2300 Hillsboro Rd Ste. 305, Nashville, TN 37212.
8. Defendant Wilson & Associates PLLC ("Wilson") is an Arkansas Professional Limited Liability Company with principal offices at 1521 Merrill Drive, Suite D-220, Little Rock, AR 72211 whose registered agent for service of process in the State of Tennessee is C T Corporation System, 800 S Gay St. Ste. 2021, Knoxville, TN 37929.

#### IV. Factual Allegations

9. On December 9, 1971, Ms. Newman purchased the property at 4448 Whiteside Street, Memphis, Shelby County, Tennessee (the "Property") for \$18,500.00.
10. On January 17, 2001, Ms. Newman refinanced the Property for a loan of \$61,200.00 from Aames Funding Corporation (the "Loan"). <sup>38109</sup>
11. At some point, Countrywide Home Loans, which subsequently merged into B of A, commenced the servicing of the Loan.
12. At no time did Ms. Newman receive notification of the change in ownership of the Loan from Aames Funding Corporation.
13. Beginning in October of 2006, Ms. Newman began to experience financial hardship and immediately sent a letter to Countrywide Home Loans, explaining that she

needed to make arrangements to modify her Loan payments. No arrangements were offered to her at that time.

14. Ms. Newman repeatedly requested financial assistance from Countrywide Home Loans and later B of A from 2006 to the present.
15. The federal Home Affordable Modification Program ("HAMP") was created as a part of the federal Financial Stability Act of 2009. B of A has been an ongoing participant in the program, which is designed to help families to save their homes when faced with financial hardships.
16. On January 27, 2009, Ms. Newman received written notice from Countrywide Home Loans denying her modification request because it "[did] not meet defined criteria per the investor on the loan."
17. On February 2, 2009, Ms. Newman received written notice from Countrywide Home Loans denying her modification request because "Countrywide is not delegated by the investor to perform modifications on the loan."
18. On or about February 27, 2009, Ms. Newman received written notice from Countrywide Home Loans that her home loan had been referred to Countrywide's Foreclosure Management Committee for review because her home loan was delinquent.
19. Beginning in March 2009, Ms. Newman attempted again to obtain a loan modification from Countrywide Home Loans, using the services of a HUD certified housing counseling agency.
20. On March 30, 2009, Ms. Newman filed for Chapter 13 bankruptcy due to Countrywide Home Loan's denial of her repeated loan modification requests and her

desire to save her home from foreclosure.

21. Beginning in January 2010, Ms. Newman attempted to obtain a HAMP loan modification from B of A, as successor in interest to Countrywide Home Loans, using the services of a HUD certified housing counseling agency.
22. On May 4, 2010, Ms. Newman received written notice from B of A denying her modification request, citing "Investor Guidelines".
23. Ms. Newman again attempted to obtain a HAMP loan modification from B of A using the services of a HUD certified housing counseling agency.
24. On December 27, 2010, Ms. Newman received written notice from B of A denying her modification request, citing "Investor Guidelines".
25. Ms. Newman was eligible for the federal HAMP program at all times that she requested a loan modification because she met all of the express requirements, as follows:
  - a. The property securing the Loan has been Ms. Newman's primary residence without interruption since 1971.
  - b. Ms. Newman's loan was delinquent as of February 2009.
  - c. Ms. Newman's loan was the first lien originated on or before January 1, 2009.
  - d. The unpaid principal balance of the loan was far below the threshold criteria of \$729,750 for a one-unit property.
  - e. Ms. Newman's total monthly mortgage payment-including principal, interest, taxes, and insurance exceeded 31% of her gross monthly income.
  - f. Ms. Newman's loan had not previously been modified under HAMP or the subject of a fully executed HAMP Trial Period Plan.

g. Ms. Newman was experiencing financial hardship and lacked sufficient liquid assets to make contractual mortgage payments.

26. On March 29, 2011, Ms. Newman received notice that a foreclosure sale was scheduled for April 21, 2011.
27. The Deed of Trust given by Ms. Newman in connection with the Loan (the "Deed of Trust") provides, on page 6 Paragraph 21, that if Lender invokes the power of sale, Trustee shall give notice of sale by public advertisement and Trustee shall mail a copy of the notice of sale to Borrower. The Deed of Trust further provides as follows: "Trustee shall sell the Property at public auction to the highest bidder **at the time and under the terms designated in the notice of sale**" (emphasis added).
28. On April 21, 2011, Ms. Newman received a single page letter purporting to give her notice that the foreclosure sale was rescheduled for May 19, 2011.
29. There was never any public advertisement of a foreclosure sale of the Property on May 19, 2011.
30. The Deed of Trust does not expressly provide for the announcement of a continuance of a foreclosure sale once public advertisement is made.
31. Deutsche, asserting that it is the successor in interest to the Loan and that the Loan was in default, purchased the Property at a foreclosure sale held on May 19, 2011.

#### **V. Claims for Relief**

##### **COUNT I: Violation of Regulation Z of the Truth-In-Lending Act**

32. The allegations of all other paragraphs and claims in this pleading are incorporated as if fully rewritten herein.
33. By failing to notify Ms. Newman of the change in ownership of her mortgage,

Defendant Deutsche has violated the provisions of Regulation Z of the federal Truth---

In-Lending Act found at 12 C.F.R. § 226.39.

**COUNT II: Tennessee Consumer Protection Act Violation**

34. The allegations of all other paragraphs and claims in this pleading are incorporated as if fully rewritten herein.
35. Bank of America's failure to provide a Trial Period Plan to Ms. Newman, an eligible borrower for HAMP, constitutes an unfair and deceptive act or practice within the meaning of the Tennessee Consumer Protection Act.
36. Bank of America's acts, policies, and practices in handling loan modification requests, for which they have been compensated by the federal government, constitute unfair or deceptive acts or practices affecting the conduct of trade or commerce and violate the Tennessee Consumer Protection Act.
37. Bank of America's acts, policies, and practices in soliciting borrowers to apply for loan modification and other relief pursuant to HAMP and then failing to give fair consideration to such requests constitute unfair or deceptive acts or practices affecting the conduct of trade or commerce and violate the Tennessee Consumer Protection Act.

**COUNT IV: Breach of Contract**

38. The allegations of all other paragraphs and claims in this pleading are incorporated as if fully rewritten herein.
39. By committing the acts complained of, Bank of America has breached contractual agreements with the United States Department of Treasury regarding the administration of the Making Home Affordable Program, which contracts were clearly

for the benefit of consumers like Ms. Newman.

40. By committing the acts complained of, Bank of America has breached its implied duty to act in good faith in the execution of its obligations under the contract.
41. By committing the acts complained of, Deutsche has violated the terms of the Deed of Trust and improperly foreclosed on the Property.

WHEREFORE, PREMISES CONSIDERED, THE PLAINTIFFS PRAY:

1. That proper service issue and be served upon the defendants requiring them to answer this Complaint and Petition.
2. That the Court issue a Temporary Injunction prohibiting Bank of America and Deutsch, their employees, agents, successors and/or assigns from evicting Ms. Newman from the Property until a trial on the merits of the claims raised in this action.
3. That the Court issue an order setting aside the foreclosure sale of the Property and reinstating the Loan in a modified form favorable to Ms. Newman.
4. That the Court enter judgment, including treble damages, against the Defendant, Bank of America and in favor of Ms. Newman for willful violations of the Tennessee Consumer Protection Act.
5. That the Court enter judgment against Defendant Deutsche in favor of Ms. Newman for damages resulting from its failure to provide the notification required by Regulation Z.
6. That the Court enter judgment against Defendants Bank of America and Deutsche and in favor of Ms. Newman for breach of contract.
7. That Ms. Newman be awarded all costs and expenses, including attorney fees,

Exhibit 1



incurred as a result of this action, pursuant to Tenn. Code Ann. §47-18-101 *et seq.*

8. For such other and further relief as to which Ms. Newman may be entitled.

Respectfully Submitted,

**Brewer & Barlow PLC**

By: 

Webb A. Brewer (B.P.R. No. 9030)

Steven E. Barlow (B.P.R. No. 023498)

Attorneys for Plaintiff

20 S. Dudley, Suite 806

Memphis, TN 38103

(901) 866-1653

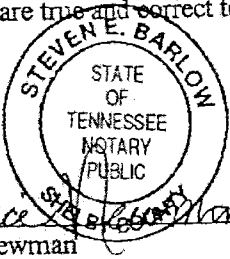
**AFFIDAVIT**

STATE OF TENNESSEE  
COUNTY OF SHELBY

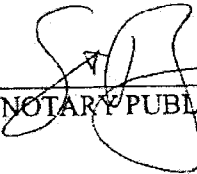
I, Bernice Newman, having been duly sworn, state as follows:

I have reviewed the allegations of the Complaint and they are true and correct to the best of my knowledge, information and belief.

FURTHER, AFFIANT SAYETH NOT.

  
Bernice Newman

Sworn and subscribed to before me this 11<sup>th</sup> day of July, 2011.

  
NOTARY PUBLIC

My Commission Expires:

10/7/14

**FIAT**

**TO THE CLERK OF THIS COURT:**

Upon bond being given in the amount of \$250<sup>00</sup>, issue the aforementioned Temporary Restraining Order and issue notice setting this matter for hearing on July 27 2011, at 9:00 A.M. for the Defendants to show cause why Plaintiff is not entitled to have the relief prayed for above.

A Temporary Restraining Order prohibiting any and all of the Defendants, their employees, agents, successors and/or assigns from proceeding with any legal action including but not limited to eviction action related to the property located at 4448 Whiteside, Memphis, Shelby County, Tennessee, remains in effect until the hearing date.

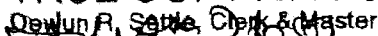
**KENNY W. ARMSTRONG**

Chancellor

**BY INTERCHANGE**

Date: July 12 2011

**A TRUE COPY-ATTEST**

  
Clerk & Master

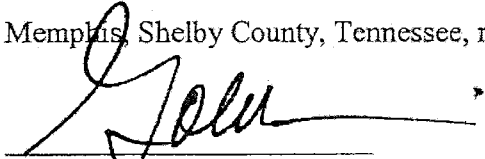
By

RE-ISSUE FIAT

TO THE CLERK OF THIS COURT:

Upon bond being given in the amount of 250<sup>00</sup>, issue the aforementioned Temporary Restraining Order and issue notice setting this matter for hearing on August 18 2011, at 10:00 AM for the Defendants to show cause why Plaintiff is not entitled to have the relief prayed for above.

A Temporary Restraining Order prohibiting any and all of the Defendants, their employees, agents, successors and/or assigns from proceeding with any legal action including but not limited to eviction action related to the property located at 4448 Whiteside, Memphis, Shelby County, Tennessee, remains in effect until the hearing date.

  
Chancellor

Date: July 27, 2011

A TRUE COPY-ATTEST  
Debra R. Suttle, Clerk & Master  
  
D.C. & M.

CHANCERY COURT CLERK'S OFFICE  
MEMPHIS, TENNESSEE

#8128019  
2001-1

Bernice Newman

Plaintiff(s)

VS

Deutsche Bank National Trust Co.

Defendant(s)

TO

Deutsche Bank National Trust Company, 300 Grand Avenue, 41st floor, Los Angeles, CA 90071

You are hereby notified that application for Temporary Injunction  
will be heard before the Chancery Court, Part 2, on Thursday,  
the 18<sup>th</sup>, day of August, 20 11 at 10 o'clock 11 A.M. as prayed for in  
the Complaint filed in this cause, a copy of which accompanies this writ and upon which Fiat has been granted.  
HEREIN FAIL NOT.

Witness Dewun R. Settle, Clerk and Master of said Court, at office, the 27 day of  
July, 20 11.

DEWUN R. SETTLE, C. & M.

by

Vicki Hale  
Deputy C. & M.

RESTRAINING ORDER

In the meantime,

SEE FIAT

until further Orders of this Court to the contrary

ARNOLD B. GOLDIN

Chancellor  
Chancery Court, Shelby County, Tennessee

July 27, 2011 .M.  
Date

DBNY  
AUG 16 2011

IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE  
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

BERNICE NEWMAN,

*Plaintiff,*

v.

Civil Action Docket No. CH-11-1150-2

DEUTSCHE BANK NATIONAL TRUST  
COMPANY, F/K/A BANKERS TRUST  
COMPANY OF CALIFORNIA, N.A., AS  
TRUSTEE FOR THE BENEFIT OF THE  
CERTIFICATE HOLDERS OF THE  
AAMES MORTGAGE TRUST,  
MORTGAGE PASS THROUGH  
CERTIFICATES, SERIES 2001-1

and

BANK OF AMERICA, N.A.

and

NATIONWIDE TRUSTEE SERVICES,  
INC.

and

WILSON & ASSOCIATES, P.L.L.C.

*Defendants.*

**NOTICE OF REMOVAL TO FEDERAL COURT**

PLEASE TAKE NOTICE that on September 6, 2011, Defendant Bank of America, N.A. and Defendant Deutsche Bank National Trust Company, F/K/A Bankers Trust Company of California, N.A., as Trustee for the Benefit of the Certificate Holders of the Aames Mortgage Trust, Mortgage Pass Through Certificates, Series 2001-1 filed a Notice of Removal of this

action, pursuant to 28 U.S.C. §§ 1331, 1332, 1367, 1441, and 1446 in the United States District Court for the Western District of Tennessee, Western Division. Pursuant to 28 U.S.C. § 1446(d), “the State court shall proceed no further unless and until the case is remanded.” A copy of the Notice of Removal, without exhibits, is attached hereto as Exhibit A.

Respectfully submitted, this the 6th day of September, 2011.




Donna L. Roberts (BPR No. 022249)  
Paul Allen England (BPR No. 026288)  
STITES & HARBISON, PLLC  
SunTrust Plaza  
401 Commerce Street, Suite 800  
Nashville, Tennessee 37219  
(615) 782-2200 (phone)  
(615) 742-0705 (fax)

*Counsel for Defendants Bank of America, N.A.  
and Deutsche Bank*

#### **CERTIFICATE OF SERVICE**

I hereby certify that on this the 6<sup>th</sup> day of September, 2011, a copy of the foregoing Notice of Removal to Federal Court was served by first-class U.S. Mail addressed to the following:

Webb A. Brewer, Esq.  
Steven E. Barlow, Esq.  
Brewer & Barlow, P.L.C.  
20 S. Dudley Street, Suite 806  
Memphis, TN 38103  
*Attorneys for Plaintiff*

  
Paul Allen England